

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

OXFORD BIOMEDICAL RESEARCH, INC.,
a Michigan corporation,

Plaintiff,

Case No. 05-60274

v.

Hon. John Corbett O'Meara

INVITROGEN CORPORATION,

Defendant.

ORDER DENYING DEFENDANT'S FIRST MOTION IN LIMINE

Before the court is a motion in limine filed by Defendant Invitrogen Corporation, now known as Life Technologies Corporation, on March 3, 2009. Plaintiff Oxford Biomedical Research, Inc., filed a response on March 10, 2009.

Plaintiff seeks to prove at trial that the term of the contract between the parties was extended by a patent "covering LICENSED MATERIAL." See Def.'s Ex. 1. Defendant seeks to exclude any such evidence, arguing that whether a patent "covers" licensed material is a question of law for the court to decide. It is possible that this contract term is unambiguous and could be construed as a matter of law; however, the parties have not properly brought the issue before the court through a motion for summary judgment or for judgment as a matter of law. The court cannot ascertain from Defendant's motion whether a patent covers the licensed material as a matter of law. Accordingly, at this time, the court declines to rule that Plaintiff is precluded from presenting evidence on the issue.

Defendant also argues that Plaintiff's witness, Dr. Denis Callewaert, is not a patent expert

and should not be permitted to testify regarding whether a patent covers the licensed material at issue. It is not clear to the court that a patent expert is necessary to provide such testimony, or whether any such testimony will be helpful to the jury; the court will revisit the issue in the context of the evidence and/or any offer of proof that is presented at trial.

Accordingly, IT IS HEREBY ORDERED that Defendant's first motion in limine [Docket No. 122] is DENIED WITHOUT PREJUDICE.

s/John Corbett O'Meara
United States District Judge

Date: March 13, 2009

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, March 13, 2009, by electronic and/or ordinary mail.

sWilliam Barkholz
Case Manager